

Medicaid Estate Recovery Policy

Service Chapter 450-01

**North Dakota Department of Human Services
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This is a list of words and phrases used throughout the Estate Recovery Manual. Each is followed by an explanation.

Assign

When used as a noun, means a person who acquires an interest in property pursuant to a written or oral assignment of that property from a person with the legal right to assign it; and, when used as a verb, means the act of conveying or transferring an interest in property.

Bona fide purchaser for value

Any person who provides consideration, including money or property, to a seller or transferor of real property or personal property equal to the fair market value of the property sold or transferred.

Child

The offspring and adopted offspring of a parent, but does not include an individual who is a stepchild, a foster child, a grandchild, or any more remote descendant.

County agency

The county social service board.

Department

The North Dakota Department of Human Services.

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Decedent's estate proceeding

A probate or an intestacy proceeding.

Devise

When used as a noun, means a testamentary disposition of real or personal property; and, when used as a verb, means to dispose of real or personal property by will.

Devisee

A person designated in a will to receive a devise.

Disabled

When referring to an adult child with disabilities, means a natural or adopted son or daughter (of the deceased Medicaid recipient) who met workers with disability, SSI, or SSA disability criteria at the time the department's claim was asserted.

Estate

Includes all property of the decedent.

Financial institution

An organization authorized to do business under state or federal laws relating to financial institutions, and includes a bank, trust company, savings bank, building and loan association, savings and loan association, and credit union.

Heir

Any individual, including the surviving spouse, who is entitled under intestate succession to the assets of a decedent who died wholly or partially intestate.

Individual

A human being.

Interest

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Any form of legal, beneficial, equitable or ownership interest.

Intestacy Proceeding

A judicial proceeding concerning the estate of an intestate.

Intestate

One who dies without leaving any valid will or who dies leaving a valid will that is ineffective to dispose of all of a decedent's estate.

Intestate succession

Succession to assets of a decedent who dies intestate.

Joint tenancy

Owning property as joint tenants with right of survivorship.

Joint tenants with right of survivorship

Ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner or owners.

Legal title

Legal ownership by a person.

Life estate

An interest in property that terminates upon the death of a measuring life.

Permanently institutionalized

Any individual who is in a long term care living arrangement, who is under the age of 55 years, has resided in a facility for six consecutive months, and has received written notice that they are considered to be permanently institutionalized, unless an appeal has determined otherwise.

Person

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Any individual, corporation, association, firm, partnership, trust, estate or other form of entity.

Personal property

All tangible and intangible personal property, wherever located, including chattels and movables, boats, vehicles, furniture, personal effects, livestock, tools, farming implements, cash, currency, negotiable papers, securities, contracts, and contract rights.

Personal representative

Includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

Probate

A judicial proceeding concerning the estate of a decedent who left a will, or to establish or dispute the existence or validity of a will.

Property

Includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

Real property

Land, wherever located, including improvements and fixtures thereon, and every estate, interest, and right in that land, including fee simple, terms for years, life estates, leasehold interests, condominiums or time share properties.

Recipient of property:

1. Any survivor, heir, assign, devisee under a will, beneficiary of a trust, transferee or other person to whom property passes upon the death of the decedent, either by law, intestate succession, contract, will, trust instrument or otherwise; and
2. Any subsequent transferee of such property, or proceeds from the sale thereof, through any form of conveyance that is not a bona fide purchaser for value.

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Security

Includes any note, stock, treasury stock, bond, debenture, membership interest in a limited liability company, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

Successors

Persons, other than creditors, who are entitled to property of a decedent under the decedent's will, except that the department, and its agents, may act as successors for purposes of collecting amounts owed to the department.

Survivor

Any person who, as a co-tenant, is automatically entitled to an expanded share of real or personal property upon the death of a fellow co-tenant.

Survivorship

An interest in property that expires upon the death of an individual whereby the interest of the individual's co-owners automatically expands to the same extent without necessity for any act of transfer or distribution.

Tenancy in common

Ownership of property by an individual, together with one or more other persons, which ownership interest shall not pass by survivorship upon the death of the individual.

Transfer on death

A transfer of real property that does not take effect until the death of the grantor, as authorized pursuant to N.D.C.C. ch. 30.1-32.1, Uniform Real Property Transfer at Death Act.

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Authority 450-01-05

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Medicaid estate recovery is authorized and restricted by federal law, 42 U.S.C. § 1396p(b) and 42 U.S.C. § 1396u-5(c)(1)(A), and by state law, N.D.C.C. §§ 50-24.1-02.3 and 50-24.1-07, including recovery for the Program of All Inclusive Care for the Elderly (PACE), the Permanently Institutionalized, and Clawback. General assistance recovery is authorized by N.D.C.C. § 50-01-21. Basic Care Assistance, Expanded SPED, and Adult Foster Care recovery is authorized under N.D.C.C. § 50-24.5-08. Human Service Center and State Hospital services recovery is authorized under N.D.C.C. § 50-06.3-07. The "probate code," N.D.C.C. Title 30.1, is applicable to all North Dakota estate proceedings.

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Purpose of Estate Recovery 450-01-10

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Estate recovery serves to reimburse federal and state taxpayers for costs of services furnished to recipients. The North Dakota legislature has historically appropriated Medicaid estate recoveries to the Medicaid program, where those funds are used to assist other Medicaid recipients.

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Administration 450-01-15

State Responsibilities 450-01-15-01

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The department makes and manages claims in the estates of deceased Medicaid recipients, deceased spouses of deceased Medicaid recipients, deceased recipients of Basic Care Assistance, Expanded SPED (Service Payments to the Elderly and Disabled), deceased recipients of obsolete programs (Aid to the Aged, Aid to the Blind, Aid to the Disabled), deceased recipients of services at the Developmental Center at Grafton, the State Hospital, and the Human Service Centers, and deceased parents of certain recipients of services at the Developmental Center at Grafton and the State Hospital.

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Training 450-01-15-01-01

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Department staff provide training to county staff concerning subjects encompassed within this manual chapter.

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Assisting County Staff 450-01-15-01-05

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Department staff assist county staff by providing technical assistance, responding to questions, and corresponding with or calling individuals who are reluctant to comply with county staff requests made pursuant to affidavits for recovery. County staff assist the department by sending affidavits for collection (See [Section 450-01-40-10](#)) for automobiles, mobile homes, and other personal property, when appropriate.

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Filing Claims in Decedents' Estates 450-01-15-01-10

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State staff file claims in decedents' estates and, as requested, provide verification of the basis for claims made.

County staff inform the state staff if the county is aware of a transfer on death deed or any other estate property. County staff inform state staff PACE administrator of the death of a PACE client. County staff inform state staff if the county knows that family members will wait out the three-year period before filing a probate.

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Evaluating and Resisting Claim Disallowances 450-01-15-01-15

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State staff evaluate disallowances of claims made in decedents' estates and, if a disallowance appears to be inaccurately made, state staff petition for allowance of the claim. State staff support petitions for allowance as necessary to convince the court of the validity of a claim.

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Receiving and Accounting for Monies Received 450-01-15-01-20

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State staff receive payment from estates, and remittances from county staff of amounts collected through affidavits for recovery, voluntary repayments, and collections made by county staff from decedents' estates through any other means available. State staff assures that any funds received from decedents' estates are properly accounted for, credited to the appropriate estate, and credited to the appropriate funding source.

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County Responsibilities 450-01-15-05

Maintaining Records 450-01-15-05-01

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County staff maintain case file records as required by manual section 449-10-40-05 to assure necessary information is available to accomplish estate collections. County staff secure asset information as required by manual section 510-05-65-45 with respect to spousal impoverishment prevention cases to assure necessary information is available to accomplish estate collections.

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Collection Activities 450-01-15-05-05

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County staff are responsible to prepare and issue letter notices immediately upon learning of the recipient's death (See [Section 450-01-40-05](#)) advising financial institutions of impending affidavits for collection, prepare and issue affidavits for collection (See [Section 450-01-40-01](#)), respond to questions from family members of decedents, and from other creditors, and account for amounts collected consistent with county and state requirements. An affidavit for collection (See [Section 450-01-40-10](#)) is used to collect such items as automobiles, mobile homes, and other personal property.

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Assisting State Staff 450-01-15-05-10

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County staff advise state staff of matters of local knowledge and, upon request, review files maintained by the county social service office, the county recorder, and the county treasurer, and provide pertinent information to state staff.

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Medicaid Claims 450-01-20

Limits on Medicaid Claims 450-01-20-01

(Revised 1/15/2011 ML #3253)

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Claims may be made at any time, including from the estate of the recipient or any responsible relative of the recipient, for Medicaid benefits incorrectly provided. Medicaid benefits correctly paid are not subject to recovery during the lifetime of a recipient, or while a deceased recipient is survived by certain relatives.

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Age of Medicaid Recipients 450-01-20-01-01

(Revised 12/16/2011 ML #3298)

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A claim may not be made for Medicaid benefits except from the estate of the recipient or the recipient's spouse for benefits correctly provided:

1. On and after October 1, 1993, to individuals age fifty-five or older;
2. Before October 1, 1993, to individuals age sixty-five and older; and
3. Effective November 1, 2010, to permanently institutionalized individuals under age 55.

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Surviving Spouse 450-01-20-01-05

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An otherwise valid claim for recovery of Medicaid benefits correctly provided may not be enforced against a decedent's estate while a spouse survives the decedent. An informational claim may be provided to the personal representative, and interested persons may be advised of the existence of a claim, and may voluntarily pay that claim.

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Surviving Child Under Age Twenty-One 450-01-20-01-10

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An otherwise valid claim for recovery of Medicaid benefits correctly provided may not be enforced against a decedent's estate while a child under age twenty-one survives the decedent. An informational claim may be provided to the personal representative, and interested persons may be advised of the existence of a claim, and may voluntarily pay that claim.

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Surviving Adult Child with Disabilities 450-01-20-01-15

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An otherwise valid claim for recovery of Medicaid benefits correctly provided may not be enforced against a decedent's estate while an adult child with disabilities survives the decedent. An informational claim may be provided to the personal representative, and interested persons may be advised of the existence of a claim, and may voluntarily pay that claim. This provision is intended to assure that the adult child who is disabled receives property from the decedent's estate, and is not intended to benefit siblings or other relatives of the adult child who is disabled.

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Deceased Spouse 450-01-20-01-20

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A claim for recovery of Medicaid benefits correctly provided against the estate of an initially surviving spouse of a deceased Medicaid recipient may be enforced to the extent the estate of the initially surviving spouse is comprised of assets that may be traced to assets in which the Medicaid recipient once had an interest, to the extent of that interest.

A claim may not be enforced against the estate of a spouse of a Medicaid recipient who predeceases the Medicaid recipient.

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Traced Assets 450-01-20-01-25

(Revised 12/16/2011 ML #3298)

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A claim for recovery of Medicaid benefits correctly provided against the estate of an initially surviving spouse of a deceased Medicaid recipient may be enforced to the extent the estate of the initially surviving spouse is comprised of assets that may be traced to assets in which the Medicaid recipient once has an interest, to the extent of that interest. In accordance with N.D.C.C. § 50-24.1-07(5), "[a]ll assets in the decedent's estate of the spouse of a deceased medical assistance recipient are presumed to be assets in which that recipient had an interest at the time of the recipient's death."

NOTE: Certain Indian income, resources, and property are exempt from Medicaid estate recovery.

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Limits on Medicaid Collections on Estates 450-01-20-05

Insolvent Estates 450-01-20-05-01

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If a decedent's estate has insufficient property to pay all claims and debts (is insolvent), claims are paid in order of priorities established by law.

"On the death of any recipient of medical assistance who was a resident of a nursing facility, intermediate care facility for individuals with intellectual disabilities, or other medical institution and with respect to whom the department of human services determined that resident reasonably was not expected to be discharged from the medical institution and to return home, or who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount of medical assistance paid on behalf of the recipient following the institutionalization of the recipient who cannot reasonably be expected to be discharged from the medical institution, or following the recipient's fifty-fifth birthday, as the case may be, must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:

1. Funeral expenses not in excess of three thousand dollars;
2. Expenses of the last illness, other than those incurred by medical assistance;
3. Expenses of administering the estate, including attorney's fees approved by the court;
4. Claims made under chapter 50-01 [General Assistance];
5. Claims made under chapter 50-24.5 [Basic Care Assistance, Expanded SPED, and Adult Foster Care];

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6. Claims made under chapter 50-06.3 [Human Service Centers] and on behalf of the state hospital; and
7. Claims made under subsection 4 [of section NDCC 50-24.1-07 – Clawback].”

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Funeral Expenses 450-01-20-05-05

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Funeral expenses may be paid from funds set aside for that purpose under Medicaid or SSI rules.

1. If funds have been set aside for funeral expenses, a claim [by a relative or funeral home] may not be made for funeral expenses against the estate except to the extent the funds set aside for the funeral total less than \$6,000 [principal].
2. If funds have not been set aside for funeral expenses, up to \$3,000 may be used for that purpose from the estate.
3. If an amount less than \$6,000 (principal) has been set aside, not including interest, estate assets may be used, provided that no more than a total of \$6,000 may be paid from the funeral set-aside and estate assets in combination and no more than a total of \$3,000 in estate assets may be used for funeral expenses.
4. Any amount in a preneed funeral service contract, prepayment, or deposit designated under section 50-24.1-02.3, which is not used for funeral or burial expenses, must be returned to the estate of the medical assistance recipient and is subject to recovery by the department.

PLEASE REFER TO THE EXAMPLES IN THIS SECTION.

Costs of flowers, grave markers, headstones, gifts to clergy or soloists, and any other similar funeral expenses, may be paid from either a funeral set-aside or from the decedent's estate, provided the established total cost limits are not exceeded. Memorial monies may also be used for funeral expenses as they are not part of the estate. A funeral lunch is not considered to be a part of the funeral expenses.

Term insurance is an exempt asset excluded for Medicaid eligibility purposes, and is not subject to estate recovery. Because it is excluded for eligibility purposes, it is an asset that is not available for designation as

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funeral expenses. Inquiries should be directed to the state estate recovery staff if the beneficiary named is the estate or the department.

Final payments for telephone, utilities, rent, etc., may not be paid from non-burial accounts after date of death. Unpaid recipient liability and other medical bills and unpaid guardianship fees may not be paid from non-funeral funds after date of death unless those bills are for expenses of last illness, and Medicaid did not pay for any expenses of last illness. State staff determine what is a valid claim for expenses of last illness.

Examples:

1. Burial account \$6,000 principal, \$1,500 interest – all \$7,500 can be paid toward the funeral with the estate paying nothing. If the funeral bill was only for \$5,000, then an affidavit for collection should be sent to the funeral home collecting \$2,500 and the estate would pay nothing.
2. Burial account \$4,000 principal, \$2,500 interest – all \$6,500 can be paid toward the funeral with the estate paying up to \$2,000. If the funeral bill was only for \$7,000, the estate would only pay \$500. If the funeral bill was only for \$5,000, then an affidavit for collection should be sent to the funeral home collecting \$1,500 and the estate would pay nothing.
3. If the recipient had no burial account, then the estate would pay up to \$3,000.
4. Burial account principal \$6,000, no interest, and no money from the estate can be used. If the funeral bill was only for \$5,000, then an affidavit for collection should be sent to the funeral home collecting \$1,000 and the estate would pay nothing.
5. Burial account of \$6,000 principal, \$1,000 interest, \$2,500 of MA assets designated for burial – all \$9,500 can be used toward the burial with the estate paying nothing. If the funeral bill was only for \$5,000, then an affidavit for collection should be sent to the funeral home collecting \$4,500 and the estate would pay nothing.
6. Burial account of \$3,000 principal, \$1,000 interest, and \$2,500 of MA assets designated for burial – all \$6,500 can be used toward the burial with an additional \$500 from the estate's assets. If the funeral bill was only for \$5,000, then an affidavit for collection

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should be sent to the funeral home collecting \$1,500 and the estate would pay nothing.

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Expenses of Last Illness 450-01-20-05-10

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Medicaid often pays expenses of last illness. In such cases, medical providers who have not received payment of recipient liability may also make claims for expenses of last illness. If there is more than one claim for expenses of last illness, and the estate has insufficient assets to pay all expenses of last illness, the available funds are properly divided between those claims of equal priority on a pro rata basis. State staff determine what is a valid claim for expenses of last illness.

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Expenses of Administering the Estate 450-01-20-05-15

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Expenses of administering the estate consist of the costs incurred by a personal representative in managing the estate, including the expense of employing assistants, including the lawyers who represent them. The expenses must be reasonable. The expenses must be related to activities required to preserve and manage the estate. Reimbursement for the costs of hiring a lawyer is authorized only when the lawyer's work is necessary for the benefit of the entire estate. Reimbursement is disallowed if the legal services are performed primarily for the personal interest of the personal representative, or another individual, and not for the benefit of the estate as a whole.

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Other Claims with Priority Greater than Medicaid Claims 450-01-20-05-20

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Claims under N.D.C.C. ch. 50-01 are for County General Assistance, claims under N.D.C.C. ch. 50-24.5 are for Basic Care Assistance, Expanded SPED, and Adult Foster Care, claims under N.D.C.C. ch. 50-06.3 are for Human Service Center and State Hospital services, and claims under N.D.C.C. § 50-24.1-07(4) are for Clawback. The department assures the correct allocation of collections if any of these agencies or services has a claim.

The United States government's claim for recovery of SSA and SSI overpayments has greater priority than claims by other creditors, including those of county social services and the department.

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Waiver of Claim 450-01-20-05-25

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Federal estate recovery law (42 U.S.C. § 1396p(b)(3)) requires states to have available a process under which a state will waive recovery in cases of undue hardship. North Dakota limits claims for undue hardship to surviving spouses, children under age twenty-one, and adult children with disabilities.

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Collection of Personal Property by Affidavit 450-01-25

Legal Requirements 450-01-25-01

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North Dakota laws provide that twenty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to the department, as successor, for collection of amounts owed to it upon being presented an affidavit made by or on behalf of the successor stating that:

1. The value of the entire estate subject to distribution or succession under chapters 30.1-01 through 30.1-23, wherever located, less liens and encumbrances, does not exceed fifty thousand dollars.
2. Twenty days have elapsed since the death of the decedent.
3. An application or petition for the appointment of a personal representative is not pending or has not been granted in any jurisdiction.
4. The claiming successor is entitled to payment or delivery of the property.

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Forms Used 450-01-25-05

(Revised 1/15/2011 ML #3253)

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The form "affidavit for collection" (See [Section 450-01-40-01](#)), created for use by county agency staff, identifies all relevant laws. Forms created by other sources may be ineffective as creditors are otherwise not permitted to act as "successors," and all other successors must wait thirty days, rather than twenty, before presenting an affidavit for collection.

If the decedent's funds are held in a P.O.D. or survivorship account, or if someone still has signature authority to draw funds from that account, the account may be accessed before thirty days after the decedent's death. A financial institution holding such an account is discharged by law from all claims concerning those funds if it pays from the account "in accordance with the terms of the account." A letter notice (See [Section 450-01-40-05](#)) must be sent to the financial institution (immediately upon learning of the recipient's death) holding an account in such cases will prevent the financial institution from being discharged, and the financial institution will typically respond by freezing the account. The letter says: "Pursuant to N.D.C.C. § 30.1-31-19(2), this is notice from a successor of the deceased party that payments should not be permitted in accordance with the terms of any multiple party account in which the deceased party had an interest."

Other form letters may be used in particular circumstances to provide information to anyone concerned about the county agency's use of an affidavit for collection.

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When Forms are Used 450-01-25-10

Learning of Client's Death 450-01-25-10-01

(Revised 1/15/2011 ML #3253)

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County social services staff may learn of a recipient's death by contact from health care providers, relatives, or funeral service providers, or by reviewing published death notices. If the client received Medicaid benefits after age fifty-five, and is not survived by a spouse, a child under age twenty-one, or a disabled child, review file information. If it appears that, immediately before death, the decedent's assets (not including jointly held real property) had a total value of less than \$50,000, collection efforts should begin immediately.

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What Property can be Collected 450-01-25-10-05

(Revised 1/15/2011 ML #3253)

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Affidavits for collection may be used to collect accounts and personal property. Use an affidavit for collection if the decedent is known to have owned valuable personal property, such as securities (capital credits, stocks, bonds, and mutual funds), motor vehicles, mobile homes (if not placed on a foundation), livestock, and farm and commercial equipment and machinery.

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Joint Tenancy Financial Accounts 450-01-25-10-10

(Revised 12/16/2011 ML #3298)

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Ownership of property as joint tenants with right of survivorship is common. Ownership of accounts that are payable on death ("P.O.D.") is also common. These arrangements are not effective to transfer ownership of an account when the decedent's estate is insufficient to pay debts and claims against the estate. When an account in a financial institution is owned in joint tenancy or is a P.O.D. account, the notice and affidavit for collection may properly be used.

Many other arrangements, such as mutual funds, variable annuities, and other securities, refer to the ownership interest as an "account," and may be owned in joint tenancy or offer "beneficiary" rights when an owner dies. If owned in joint tenancy, or with a P.O.D. feature, these property interests are not appropriate for use of an affidavit for collection, as they are not maintained in a financial institution.

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Motor Vehicles and Mobile Homes 450-01-25-10-15

(Revised 12/16/2011 ML #3298)

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Affidavits for collection should be used to obtain valid titles to motor vehicles and mobile homes. If there is a title, use the department's affidavit for collection. If you do not have a title, the Application for Certificate of Title & Registration of a Vehicle (See Sections [450-01-40-01](#) and [450-01-40-15](#)) should be used to obtain a title. County agency staff who need to obtain a clear title to a motor vehicle or mobile home should consider:

1. Whose name is on the existing title? County agency staff may use an affidavit for collection if the motor vehicle or mobile home was owned solely by the decedent, or by tenancy in common (a vehicle titled with "and" or "or"), but not by joint tenancy with the right of survivorship.
2. An affidavit for collection is appropriate for a motor vehicle or mobile home only if the county agency has or can obtain physical possession of the property.
3. A motor vehicle or mobile home obtained by affidavit for collection must thereafter be converted to cash. Affidavits for collection should not be used to obtain such property if it has limited value, or if selling it may be difficult due to condition or other factors.

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Personal Property Without Title 450-01-25-10-20

(Revised 1/15/2011 ML #3253)

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Affidavits for collection may be used to obtain ownership of personal property that has no "paper" title. Examples of such personal property include livestock and farm and commercial equipment and machinery. If county agency records indicate the decedent had legal title to such personal property, before issuing affidavits for collection of that property, county agency staff should consider the same factors identified concerning motor vehicles and motor homes. With respect to livestock, additional factors of assuring adequate care must be considered. If the decedent has identified personal property as being used in conjunction with the operation of the decedent's farm or other business, the decedent may properly be treated as having legal title to that personal property, unless the county agency records include an indication that the personal property is owned in joint tenancy.

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Securities 450-01-25-10-25

(Revised 1/15/2011 ML #3253)

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Transfers of securities are often accomplished through “transfer agents.” When presented with an affidavit for collection, a transfer agent properly will change the registered ownership on the books of the entity that issued the security. County agency staff may need to remind transfer agents that they are required to do so under law. A stockbroker’s services may be required to sell a security. A stockbroker may be able to help identify the transfer agent for a security. County agency staff may contact local stockbrokers for assistance.

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How to Use Forms 450-01-25-15

Encouraging Freezing of Accounts 450-01-25-15-01

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If the decedent's funds were held in a P.O.D. or survivorship account, or if someone without an interest in an account has signature authority to draw funds from that account, immediately prepare and send a letter notice (See [Section 450-01-40-05](#)) warning that claims against the financial institution will not be discharged by payments in accordance with the type of account. Send the notice by telefacsimile if necessary. A telephone call may be wise in some circumstances, but must be immediately followed by the written notice. This letter notice must be sent to the financial institutions immediately upon learning of the death.

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Beginning the Collection Process 450-01-25-15-05

(Revised 1/15/2011 ML #3253)

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To avoid any over collections, preliminarily review the Medicaid Benefits Paid screen in TECS or the Client Medicaid Benefits Paid screen in Vision to determine the approximate amount of the claim. If the value of the apparent estate exceeds the allowable funeral expenses, contact the clerk of district court in the county in which the decedent lived to determine if anyone has begun a decedent's estate proceeding. If not, prepare affidavits for collection (See [Section 450-01-40-01](#)) for transmittal to all holders of the decedent's liquid assets and personal property easily converted to cash, except for property set aside for the decedent's funeral. Transmit those affidavits for collection so they are in the hands of the intended recipient on the twentieth day after death, or as soon thereafter as possible.

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Follow-up 450-01-25-15-10

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Contact, by telephone or letter, anyone who does not respond to the affidavit for collection within ten working days. Explanations may be required, particularly if the affidavit is presented to someone who is not familiar with the process.

An institution in which the decedent maintained an account may demand a copy, or even a certified copy, of a death certificate. Such demands are not permitted under the law, but have sometimes become "bank policy." Contact the department's estate recovery staff if a financial institution insists, after the county agency staff have explained that the law does not require a successor to produce a death certificate, and that death certificates are not generally available to the public. An institution in which the decedent maintained a joint or P.O.D. account may assert that the funds should properly go to the joint tenant or P.O.D. payee. Contact the department's estate recovery staff if a financial institution insists that the funds should go to the joint tenant or P.O.D. payee after the county agency staff have explained that the estate is insolvent.

Competing claims may arise about funds recovered by use of affidavits for recovery. The most common sources of those claims are medical providers who have not been paid in full (particularly for recipient liability) and funeral service providers. Contact the department's estate recovery staff for assistance with those claims. The department will assure that recovered funds are disbursed consistently with the claims priority laws.

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Collections in Decedents' Estate Proceedings 450-01-30

Beginning a Decedent's Estate Proceeding 450-01-03-01

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Decedents' estate proceedings are begun with an application or petition. State law requires copies of those documents to be furnished to the department. N.D.C.C. § 50-24.1-07(3). Unless claims against the estate are paid in full, property in the estate must be sold to pay the claims. The personal representative must furnish a statement of assets and disbursements if the department's claim is not paid in full. N.D.C.C. § 50-24.1-07(3).

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Making the Department's Claim 450-01-30-05

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The department files its claim with the clerk of district court, and sends a copy to the county agency involved, within ninety days after the department receives the application or petition that begins the decedent's estate proceedings. Before filing its claim, department estate recovery staff sends to the county agency involved a copy of the application or petition that begins the decedent's estate proceedings. The county agency may send its claim for General Assistance to the personal representative (or to the personal representative's lawyer) and file its claim with the clerk of district court, within the same ninety days, using the department's Claim Against Estate form with appropriate changes to correctly describe the General Assistance claim. The department's Claim Against Estate (See [Section 450-01-40-20](#)) includes a written demand for notice.

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Estate Debts 450-01-30-10

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A will cannot alter the obligation of paying the decedent's debts first. A professionally prepared will always directs that the decedent's debts be paid first. A claim is made in every estate, irrespective of a will, since a will only determines the distribution of the estate after all debts have been satisfied.

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Sales of Estate Property 450-01-30-15

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Family members can purchase property of a decedent's estate at fair market value, thus becoming bona fide purchasers for value. [Fair market value (FMV) for estate recovery purposes is different than FMV for Medicaid eligibility purposes.] Any transfer to a family member of property of a decedent's estate makes the family member a "recipient of property." Transfers of estate property may be voided if made to the personal representative or the personal representative's spouse, agent, or business in which the personal representative has a substantial financial interest. The family can pay the Medicaid claim in lieu of selling the decedent's property.

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Interest on Claims 450-01-30-20

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“Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case allowed claims bear interest in accordance with that provision.” N.D.C.C. § 30.1-19-06(5).

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Spousal Impoverishment Prevention Cases 450-01-30-25

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1. Spousal impoverishment cases often involve couples with substantial assets. The same individuals who counsel couples on how to retain the greatest amount of assets while securing Medicaid benefits for an institutionalized spouse are typically present to help resist any Medicaid claim made in the community spouse's estate. If the department lacks access to any record of the asset transfers involved in achieving eligibility, we may be unable to meet our burden of proof when the Medicaid claim is resisted.
2. In spousal impoverishment cases, the department files claims in the estates of community spouses who initially survive the institutionalized Medicaid recipient spouse. Success of these claims may depend on having accurate information on [SFN 52, Spousal Assets](#). If the couple has made transfers in anticipation of meeting the spousal asset requirements, county agency staff must accurately identify all property (account numbers, insurance policy numbers, and property descriptions) and correctly indicate in the final two columns the institutionalized spouse's previous ownership of assets. SFN 52, Spousal Assets, must be used by the county agency in spousal impoverishment cases. This form must be sent to the state office for inclusion in estate files. If this form was not sent in to the state office when the application was approved, it should be sent in immediately upon learning of the estate proceedings.
3. When any Medicaid recipient over age fifty-five dies leaving a surviving spouse, the department cannot enforce a claim during that spouse's lifetime. The department files a claim in the decedent's estate of the initially surviving spouse. At that time, the claim for repayment of Medicaid benefits furnished to the institutionalized spouse may only be paid out of assets in the community spouse's estate in which the institutionalized spouse once had an interest. Thus, when the department is able to make a claim, the assets must be "traced" in the community spouse's estate back to the community spouse.
4. The asset assessment will be of very limited use if county agency staff rely, without verification, on statements made by the individuals concerning the assets, incomplete descriptions of assets (such as listing

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bank accounts and insurance policies without identifying numbers), misidentifying ownership of assets (saying assets individually owned when they are actually jointly owned or vice versa), or that fail to identify ownership of all assets.

5. The Medicaid applications, and subsequent redeterminations, often accurately describe the asset transfers that occur in the months following an application. Applications may include accurate asset descriptions and verifications. The file may include correspondence to and from the applicant and those acting on behalf of the applicant. All of this information is extremely valuable to making an effective claim.

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Enforcing Claims 450-01-30-30

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The department collections staff will take reasonable actions to assure that the department's claims (and when present, the county agency claims) are paid within the limits of available funds in the decedent's estate. This may include itemizing claims, disputing a personal representative's denial of a claim, disputing actions taken by the personal representative with respect to estate property or other claims, and appealing adverse court decisions. Department estate recovery staff may request the county agency's assistance with producing file material, inspecting estate property, or securing information from knowledgeable local sources.

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When Agency May Commence Estate Proceedings 450-01-35

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A claim cannot be made against real property, or in an estate with property worth more than \$50,000, without the appointment of a personal representative. If three years pass after a decedent's death before commencement of estate proceedings, creditors' claims are barred thereafter in that estate. Occasionally, when a decedent has an estate, but no decedent's estate proceedings have been commenced by any of the decedent's family members or devisees, the department will begin decedent's estate proceedings, or ask the county agency to do so, to avoid having claims barred by the passage of three years after the decedent's death.

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Appendix 450-01-40

**Affidavit for Collection of Personal Property of the
Decedent 450-01-40-01**

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Letter Notice 450-01-40-05

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**Affidavit for Collection of Personal Property of the
Decedent - ND Dept. of Transportation - Motor Vehicle
Division 450-01-40-10**

REPEALED

(Repealed 12/16/2011 ML #3298)

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**Application for Certificate of Title & Registration of a
Vehicle 450-01-40-15**

(Revised 1/15/2011 ML #3253)

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Department's Claim Against Estate 450-01-40-20

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